A Horse is a Horse, of Course of Course

By Ralph A. DeMeo, Esq., Hopping Green & Sams, Tallahassee, Florida
on behalf of The Florida Bar Animal Law Committee

"In the context of animal owners and homeowners' associations, it truly can be said that 'one man's dog is another man's horse'"


R, DEMEO

Animal owners and home owners are often not birds of a feather and they frequently do not flock together. In an infamous Tallahassee, Florida case, this principle was very apparent. In fact, it would be even more appropriate to say that this case represents a horse of a different color! The dispute which is the subject of this article relates to the keeping of horses within an unwilling Florida homeowners' association.

First, some general legal background is in order. In Florida, a distinction is often made between "domestic" animals and "livestock." By statute, animal cruelty laws preclude the "torture, torment, or cruelty of any animal defined to include every living dumb creature."[1]

With respect to horses, there also are laws prohibiting the "killing or aggravated abuse" of horses.[2] However, there are exceptions for "recognized livestock husbandry practices or techniques."[3] Local governments also promulgate ordinances that both protect and in some cases create exceptions for domestic animals and livestock.

Under Tallahassee's Code of Ordinances, "livestock" means "all animals of the equine, bovine, ratite, or swine class."[4] This includes "goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals."[5] While the Ordinances protect all animals from cruelty, it is unlawful for any person to keep any livestock or fowl within the city limits, subject to certain exceptions. With respect to horses, the exception is for "any horse or fowl kept on tracts of land within the city limits that consist of five or more contiguous acres or any other livestock kept on 15 or more contiguous acres."[6]

Additionally, the common law concept of "nuisance" provides that no person may utilize her property in a manner that unreasonably interferes with another's reasonable enjoyment of his property. Common law nuisance claims have been asserted for centuries in the context of animal disputes.[7] Typically, when any litigation ensues, whether under state or local laws or homeowners' association covenants, nuisance claims are included.

Also, homeowners' associations are specifically authorized and regulated by statute in Florida.[8] Florida law allows written instruments "which subject the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members."[9] Florida law also authorizes actions at law or in equity against the homeowners' association, any member, and others for violation of these statutes or the homeowners' association declarations.[10] Not surprisingly, tensions frequently arise between homeowners and their associations. This is particularly true in the context of animal owners and homeowners' associations.

In the context of animal owners and homeowners' associations, it truly can be said that "one man's dog is another man's horse." Animal lovers by definition love their animals. However, as simple as that concept may seem, not every animal lover loves his neighbor's animal (or his neighbor for that matter). This is particularly true in battles relating to neighbors' pets.

An infamous case arose in Tallahassee involving an individual in a prominent Tallahassee neighborhood who owned approximately 7 acres of land that was considered to be subject to the covenants of a homeowners' association.[11] This homeowner loved her miniature horses and considered them to be her "pets." Her neighbors, however, considered the horses to be "livestock" and thereby argued against their ownership within the limits of the homeowners' association. This led to threats and ultimately litigation which was resolved on somewhat surprising grounds as discussed later in this article.

Typical homeowners' association covenants provide as follows:

> No animals other than cats, dogs, or other household pets shall be kept temporarily or permanently on any Lot. No livestock or poultry of any kind shall be kept or raised on any Lot. No household pets shall be kept, bred, or raised on any Lot for commercial purposes. Any animal which, in the sole opinion of Declarant or its successor, is or becomes dangerous or an annoyance or nuisance in the neighborhood or nearby property, or destructive of wildlife, immediately upon notice to the Owner of such animal, may not thereafter be kept on the Lot. Owners shall be responsible for removal of any pet litter on easements, public and private streets, beaches, and other residents' property. When off the Owner's property, all household pets shall be kept on leash or otherwise under the physical control of a responsible party.

continued, next page

Some homeowners' association's covenants do not distinguish between "livestock" or "pets" and specifically preclude horses. Nevertheless, under the definitions identified above, a horse would be considered livestock, and therefore generally may not be kept temporarily or permanently within the limits of the association, unless specifically excluded from the prohibitions.

The horse owner in the Tallahassee case considered her miniature horses to be pets, no different than a cat or dog or other household pet, and refused to give them up. It should be noted that while she maintained 30 miniature horses on approximately seven acres she maintained her property very well, and there was no obvious extreme odor or sanitary problem. Nevertheless, residents complained loudly and bitterly that her horses were disturbing their peace and enjoyment of their property, in violation of the homeowners' association's covenants and other laws.

Following numerous "over the fence negotiations" and irate presentations and counter presentations at homeowners' association gatherings, the inevitable litigation ensued, with both parties lawyering up and staking their claims. Unsurprisingly, the homeowners' association claimed violation of the covenants and nuisance law. Interestingly, violations of local and state animal cruelty laws were argued because of the alleged high horse to acreage ratio. The horse owner argued that the homeowners' association arbitrarily and capriciously excluded horses which were her pets, and otherwise denied that she was creating a nuisance or engaging in any way in animal cruelty. Of course, the mere allegations by the homeowners' association of nuisance and particularly, animal cruelty, only served to inflame the discussions with the horse owner and drive the parties further apart.

The claims of the homeowners' association under the covenants were facially well founded, if somewhat arbitrary. However, because as mentioned above, the horses were healthy and the property was well maintained, it was not an obvious nuisance. The case ultimately was resolved after a surprising turn of events.

The smart money in the local legal community was on the homeowners' association prevailing under the covenants. However, it was learned that much to the surprise of all the parties, not all of the horse owner's property was located within the limits of the homeowners' association. Therefore, arguably, she was not subject to the covenants or to any control whatsoever by the homeowners' association. Nevertheless, the Circuit Judge ruled for the homeowners' association, finding that the entire parcel was intended to be within the homeowners' association. On appeal, the home owner argued that her property was not within the limits of the homeowners' association because she did

Join the Florida Bar's Animal Law Committee!

What is the Animal Law Committee?

The Animal Law Committee (ALC) monitors and informs the members of the Florida Bar and the public of significant developments in the area of animal law. We meet at least three times a year to share new information regarding this practice area.

The ALC is in the midst of a membership drive to help reach section status. This is an opportunity to make a real difference in animal law and with minimal effort. The Florida Bar has made it clear membership must increase before we submit a request to become a section. Section status is a critical goal. Section status will also allow us to engage in a number of activities that we are currently prohibited or restricted from pursuing, including but not limited to increasing publications and drafting and supporting legislation. It will allow us to make a far greater impact in animal law.

How you can assist the ALC.

Join the ALC. We request that attorneys with an interest in this legal area email Gil Panzer at gil@gilpanzerlaw.com and commit to complete the committee preference form in December with a request to be on the ALC. We further request that attorneys contact as many other attorneys as possible to let them know about joining the ALC.

not agree to the unity of title document executed by the homeowners' association. The First District Court of Appeal reversed, holding that the entire acreage was not subject to the homeowners' association covenant and restrictions because there was no agreement between the homeowner and the homeowner's association to make all her acreage subject to the association's covenants and restrictions.[12]

In reaching its per curiam opinion, the First District Court specifically noted that "the purpose of a unity of title document is to in some way restrict or transfer development rights; it is an agreement entered into by the property owner and a governmental authority."[13] Because there was no agreement between the homeowner and the homeowners' association relating to the additional acreage, the Court applied this principle to rule in favor of the homeowner. The Court also specifically noted that: "it is a basic principle that covenants restraining the free use of realty are not favored in the law."[14] Furthermore, the Court pointed out that "restrictive covenants 'are private promises or agreements creating negative easements or equitable servitudes which are enforceable as rights arising out of contract.'"[15]

The above case demonstrates several points which are instructive. First, state and local laws, and homeowners' association covenants and restrictions, are not always well suited for every dispute that may arise, particularly in the context of animals. Second, homeowners' associations are ill equipped to deal with animal-related issues such as this case. Finally, it should be acknowledged that, as in this case, one man's dog is indeed another man's horse.

Ralph A. DeMeo *is a Shareholder in Tallahassee's Hopping Green & Sams, practicing environmental, land use, and animal law. His B.A. and M.A. are from Stetson University and J.D. from FSU. He is present Chair of The Florida Bar Animal Law Committee, and past Chair of The Environmental and Land Use Law Section, and Journal and News Editorial Board. He is rated by Martindale-Hubbell A/V 5.0 Preeminent, Florida Super Lawyers, Chambers USA America's Leading Business Lawyers, Best Lawyers in America, and Who's Who Legal of Florida. He is a Board member of St. Francis Wildlife Association and Pets Ad Litem.*

Endnotes:

1 § 828.02, Fla. Stat. (2013)
2 § 828.125, Fla. Stat. (2013)
3 § 828.125(5), Fla. Stat. (2013)
4 § 4-2, Tallahassee Code of Ordinances.
5 § 4-2, Tallahassee Code of Ordinances
6 § 4-5, Tallahassee Code of Ordinances.
7 *Beckman v. Marshall*, 85 So. 2d 552 (Fla. 1956); see also *Gates v. City of Sanford*, 566 So.2d 47 (Fla. 5th DCA 1990) and *Bal Harbour Village v. Welsh*, 879 So. 2d 1265 (Fla. 3d DCA 2004).
8 Ch. 720, Fla. Stat. (2013)
9 § 720.301(4), Fla. Stat. (2013)
10 § 720.305, Fla. Stat. (2013)
11 *Kilgore vs. Killearn Homes Association, Inc.*, 676 So. 2d 4 (Fla. 1st DCA 1996).
12 *Id. at 6.*
13 *Id.* at 6.
14 *Id.* at 7.
15 *Id.* at 7.

Fellowship Program Open To All Young RPPTL Attorneys

The Real Property, Probate and Trust Law Section of the Florida Bar (RPPTL) is pleased to announce that it is currently accepting applications for the new 2014-2016 Fellowship class. The Fellowship Program is designed to attract and retain young lawyers to the RPPTL Section. The Fellowship program allows young lawyers to become substantially involved in the Section work, receive leadership training and work closely with leading attorneys in their field. The RPPTL Section program is designed to cultivate and develop future leaders to continue the strong presence of the Section as a leader in The Florida Bar.

The Fellowship Program is open to all lawyers who are members of the RPPTL Section and (a) have been admitted to the bar for fewer than 12 years or (b) are younger than 38 years of age who practice in the area of real property, estate or other area of law covered by the RPPTL Section.

Fellowships are provided for a two-year term and each Fellow will receive a subsidy of up to $2,500 annually (not to exceed actual out-of-pocket expenses) to help defray the expense of attending RPPTL Section meetings. The Section will begin taking applications on January 1, 2014 and the deadline to apply is March 15, 2014. The application is available through the RPPTL section website at www.RPPTL.org or from Marsha Madorsky, mmadorsky@carltonfields.com.